

**FILED**

**08 JUL 28 PM 2:33**

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*9/18*  
DEPUTY

1 **Reich Radcliffe LLP**  
Marc G. Reich (SBN 159936)  
2 4675 MacArthur Court, Suite 550  
Newport Beach, CA 92660  
3 Telephone: (949) 975-0512  
Facsimile: (949) 975-0514  
4 Email: mgr@reichradcliffe.com  
5 **Frommer Lawrence & Haug LLP**  
Richard E. Parke (Pro Hac Vice Upon Application)  
6 745 Fifth Avenue  
New York, New York 10151  
7 Telephone: (212) 588-0800  
Facsimile: (212) 588-0500  
8 Email: rparke@flhlaw.com  
9 Attorneys for Plaintiff  
Bigfoot Ventures, LLC

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 Bigfoot Ventures, LLC,  
15 Plaintiff,  
16 v.  
17 Compañía Mexicana de Aviación, S.A. de C.V.  
d/b/a Mexican Airlines,  
18 Defendant.  
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CASE NO.: **'08 CV 1357 BEN JMA**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**FILED BY FAX**

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**27.**

1 voluntary submission to this Court's jurisdiction when Mexicana filed its complaint with NAF  
2 concerning Bigfoot's right to register the domain name "vtp.com[.]"

3 **Facts**

4 5. Bigfoot is a venture capital firm that invests in a wide range of companies and businesses.  
5 One aspect of Bigfoot's operations is incubating business concepts that it intends to mature into  
6 active business entities, with a focus on the communications, technology, education, entertainment,  
7 real estate, and new media business sectors. Part of Bigfoot's practice involves purchasing  
8 short/memorable letter-combination domains for use as acronyms in connection with its venture  
9 capital operations and as eventual identifiers for its businesses. This practice is grounded in  
10 Bigfoot's good faith belief in the value of short domain names as Internet addresses, and not in an  
11 effort to resell those domains for profit or obtain or exercise any other sort of leverage or advantage  
12 over another business or individual.

13 6. On May 28, 2008, Bigfoot purchased the disputed domain name "vtp.com" from  
14 Buydomains.com. DomainDiscover, which upon information and belief is headquartered at 14284  
15 Danielson Street, Poway, CA 92064, is the registrar ("Registrar") for "vtp.com." Upon further  
16 information and belief, DomainDiscover is accredited by the Internet Corporation for Assigned  
17 Names and Numbers ("ICANN").

18 7. On May 30, 2008—only two days after Bigfoot purchased "vtp.com"—Mexicana  
19 submitted a complaint to NAF pursuant to ICANN's Uniform Domain Name Dispute Resolution  
20 Policy ("ICANN Policy") seeking to have the "vtp.com" domain registration transferred to  
21 Mexicana. The matter was assigned designated Claim Number: FA0805001195961. Mexicana  
22 claimed that (a) Bigfoot's "vtp.com" domain name is identical to Mexicana's VTP mark, (b) Bigfoot  
23 does not have any rights or legitimate interests in the domain name, and (c) Bigfoot registered and  
24 used the domain name in bad faith.

25 8. On July 14, 2008, an NAF arbitrator issued a decision directing transfer of the "vtp.com"  
26 registration to Mexicana.

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1       9.       On July 16, 2008, in accordance with the ICANN Policy, NAF provided notice to  
2   Mexicana, Bigfoot, and ICANN that the Registrar would not implement the NAF arbitrator's  
3   decision if Bigfoot commenced a lawsuit against Mexicana concerning registration of the domain  
4   name "vtp.com" within a ten-day period. The ICANN Policy provides that this period is ten  
5   business days. ICANN Policy ¶ 4(k).

10. Bigfoot has neither offered to sell nor solicited a sale of the “vtp.com” domain to any third party, including Mexicana, and has no current plans to sell the domain. Defendant Mexicana has never contacted Bigfoot concerning this mark, for any purpose, beyond the underlying proceeding before NAF. Bigfoot’s acquisition and registration of “vtp.com” was not done to trade off of Mexicana’s VTP mark or to favor any Mexicana competitor, but rather as part of Bigfoot’s good faith business operations and plans.

### First Count

**Declaration Under Anticybersquatting Consumer Protection Act**

14 11. Plaintiff realleges and incorporates paragraphs 1-10 above.

15 12. In registering the domain name “vtp.com[,]” Bigfoot did not have a bad faith intent, as  
16 provided in 15 U.S.C. § 1125(d)(1)(A)(i), to profit from Mexicana’s VTP mark.

17 13. In registering the domain name “vtp.com[,]” Bigfoot did not have the intent, as provided  
18 in 15 U.S.C. § 1125(d)(1)(B), to divert consumers from Mexicana’s online location to a site  
19 accessible under the domain name that could harm the goodwill represented by the mark, either for  
20 commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of  
21 confusion as to the source, sponsorship, affiliation, or endorsement of the site.

14. In registering the domain name “vtp.com[,]” and at no time since registration, has Bigfoot, as provided in 15 U.S.C. § 1125(d)(1)(B), offered to transfer, sell, or otherwise assign “vtp.com” to Mexicana or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, nor is there prior conduct by Bigfoot indicating a pattern of such conduct.

1 15. In registering the domain name "vtp.com[.]" Bigfoot, as provided in 15 U.S.C.  
2 § 1125(d)(1)(B), did not provide material and misleading false contact information when applying  
3 for registration of that domain name, has not intentionally failed to maintain accurate contact  
4 information, nor is there prior conduct by Bigfoot indicating a pattern of such conduct.

5 16. Bigfoot, as provided in 15 U.S.C. § 1125(d)(1)(B), has not registered or acquired multiple  
6 domain names that it knows are identical or confusingly similar to marks of others that are  
7 distinctive at the time of registration of such domain names, or dilutive of famous marks of others  
8 that are famous at the time of registration of such domain names, without regard to the goods or  
9 services of the parties.

10 17. Bigfoot has not, as provided in 15 U.S.C. § 1125(d)(1)(A)(ii), registered, trafficked in, or  
11 used a domain name that at the time "vtp.com" was registered was identical or confusingly similar to  
12 Mexicana's VTP mark.

13 18. Bigfoot believed and had reasonable grounds to believe that its registration of the domain  
14 name "vtp.com" was lawful, as provided in 15 U.S.C. § 1125(d)(1)(B)(ii).

15 19. As required by 15 U.S.C. § 1114(2)(D), Bigfoot has given notice of its intent to file an  
16 action to establish that Bigfoot's registration and use of the domain name "vtp.com" is not unlawful  
17 under the ACPA to Mexicana.

18 Second Count

19 Declaratory Judgment

20 20. Plaintiff realleges and incorporates paragraphs 1-19 above.

21 21. A dispute exists between Bigfoot and Mexicana concerning Bigfoot's right to register and  
22 use the domain name "vtp.com[.]" As a consequence of this dispute, an actual and justiciable  
23 controversy exists between Bigfoot and Mexicana.

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**Prayer for Relief**

WHEREFORE, Bigfoot requests that the Court enter judgment:

1. Declaring that Bigfoot's registration and use of the domain name "vtp.com" is not unlawful under the ACPA, 15 U.S.C. § 1124(d);
2. Declaring that Bigfoot's registration and use of the domain name "vtp.com" does not constitute a bad faith intent to profit from Mexicana's VTP mark under the ACPA, 15 U.S.C. § 1124(d);
3. Declaring that Bigfoot is not required to transfer the registration for the domain name "vtp.com" to Mexicana;
4. Declaring that the Registrar shall not transfer the registration for the domain name "vtp.com" to Mexicana; and
5. Providing all such other and further relief as the Court deems just and proper.

Respectfully submitted,

Reich Radcliffe LLP

By: \_\_\_\_\_

  
Marc G. Reich  
Co-Counsel for Plaintiff

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 153430 - MB  
\* \* C O P Y \* \*  
July 28, 2008  
14:33:26

**Civ Fil Non-Pris**

USAO #: 08CV1357 CIVIL FILING  
Judge...: ROGER T BENITEZ  
Amount.: \$350.00 CK  
Check#.: BC2627

**Total-> \$350.00**

FROM: BIGFOOT VENTURES LLC VS  
COMPANIA MEXICANA DE AVIACION



## CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Bigfoot Ventures, LLC

## DEFENDANTS

Compañía Mexicana de Aviación, S.A. de  
C.V., d/b/a Mexican Airline

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

(b) County of Residence of First Listed Plaintiff See Attachment  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)  
See Attachment

Attorneys (If Known)  
Knobbe Martens Olson & Bear LLP  
Edward A. Schlatter  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
Tel: 949-760-0404

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08 CV 1357 BEN JMA

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/REPLEVIN</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## V. ORIGIN

- (Place an "X" in One Box Only)  
☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 1114(2)(D)(v) and 15 U.S.C. § 1125(d)

Brief description of cause:

Decl. Relief re: registration and use the domain name "vtp.com[.]"

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$

☐ CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/28/08

SIGNATURE OF ATTORNEY OF RECORD

Man G. Reich

FOR OFFICE USE ONLY

RECEIPT #

153430

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

PB 07/28/08

FILED BY FAX

CSDJS44



ATTACHMENT TO CIVIL COVER SHEET

Bigfoot Ventures, LLC v. Compañía Mexicana de Aviación, S.A. de C.V., d/b/a Mexican Airlines

I(b) County of Residence

Plaintiff's corporate headquarters is in Hong Kong. Plaintiff has a California mailing address in Los Angeles County, CA, but does not have any employees, officers, directors, or other personnel at that address.

I(c) Counsel for Plaintiff

**Reich Radcliffe LLP**

Marc G. Reich (SBN 159936)  
4675 MacArthur Court, Suite 550  
Newport Beach, CA 92660  
Telephone: (949) 975-0512  
Facsimile: (949) 975-0514  
Email: mgr@reichradcliffe.com

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Richard E. Parke (Pro Hac Vice Upon Application)  
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New York, New York 10151  
Telephone: (212) 588-0800  
Facsimile: (212) 588-0500  
Email: rparke@flhlaw.com